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DATE FILED: 8/27/08

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ANDIN INTERNATIONAL, INC.

Plaintiff,

-against-

YURMAN STUDIO, INC.,

Defendant.

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YURMAN STUDIO, INC.,

Defendant-Counterclaimant,

-against-

ANDIN INTERNATIONAL, INC. and  
VARDI GEM LUSTRE, LLC,

Counterclaim-Crossclaim  
Defendants.

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HON. HAROLD BAER, JR., UNITED STATES DISTRICT JUDGE:

WHEREAS Plaintiff-Counterclaim Defendant Andin International, Inc. ("Andin") has sued Defendant-Counterclaimant Yurman Studio, Inc. ("Yurman") for a declaration several of its jewelry products do not infringe Yurman's copyright in Pavé Collection Enhancer U.S. Copyright Registration NO. 1-024-276 under the Copyright Act of 1986; and

WHEREAS Andin has moved pursuant to Fed. R. Civ. P. 56(c) for summary judgment that it does not infringe on the copyrighted Enhancer arguing that Andin did not copy the copyrighted jewelry in question because Andin had no access to the jewelry and because its jewelry is not substantially similar to the Yurman's; and

WHEREAS Andin has also moved pursuant to Fed. R. Civ. P. 56(c) for summary judgment on Yurman's counterclaim of trade dress infringement under Section 43(a) of the Lanham Act arguing, among other things, that Yurman failed to articulate specifically the jewelry designs that they seek to protect as trade dress and that there is no likelihood of confusion between the two company's jewelry designs; and

26, 2008 at 12:30 p.m.; and

WHEREAS under Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574 (1986), this Court has reviewed the pleadings, depositions, declarations and exhibits on file, and drawn all reasonable inferences against the moving party and found material issues of fact in dispute regarding access to the copyrighted work, substantial similarity of the designs; it is hereby

ORDERED that Andin's Rule 56 motion is denied because there are several genuine issues of material fact in dispute that preclude judgment as a matter of law on both the copyright and trade dress claims, Celotex Corp. v. Catrett, 477 U.S. 317 (1986); and it is further

ORDERED that the parties are to appear for trial on the copyright and trade dress claims beginning Monday, September 22, 2008 at 9:30 a.m. in Courtroom 23B.

SO ORDERED  
New York, New York  
August 26, 2008

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U.S.D.J.